

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/279/2012.

(Present Sri.T.P.Vivekanandan)

Appellant : The Managing Director,
M/S. Solve Plastic Products Pvt Ltd,
Tholicode P.O, Punalur-691 333.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
PUNALUR.

ORDER.

Background of the Case: -

The appellants are running a SSI Unit with consumer No.14261 under Electrical Section, Punalur. While so, the inspection conducted by KSEB on 20.11.2005, has detected that two of the CTs of the Meter were not working and accordingly a back assessment was done and a bill was issued to the party amounting to Rs.13, 22,136/-, for the period 11/2004 to 11/2005. Aggrieved by this bill, the consumer filed a Writ petition before the Hon High Court of Kerala wherein it was ordered to deposit Rs.6,61,068/- and further ordered to deposit Rs.2,00,000/-, in pursuant to an interim order passed by the Hon High Court and referred the matter to Electrical Inspector, Kollam, who after examining the meter had quantified the energy consumption for the last one year to 181458 units. Accordingly, the Assistant Engineer, Punalur, revised the bill to Rs.3,51,873/-. The petitioner had already remitted Rs.8,63,068/-and the balance of Rs.5,09,195/- was credited for adjustment in his future bills of the consumer, as per the direction of the Hon High Court.

The petitioner approached the Hon High Court again with a revision petition vide RP No. 724/ 2010 in WP © No.24314 of 2006 for seeking Court direction to get interest for the excess amount remitted by the petitioner. The Hon Court disposed the petition on 8.04.2011, by pointing out that the petitioner had no earlier claim for the interest and the claim for interest was left open to be urged in appropriate Proceedings. The petitioner approached the CGRF, Kottarakkara, praying that he was entitled to get interest at the rate of two times the bank rate as per Reg. 37 of Terms and Conditions of Supply. The CGRF has ordered as follows; "The opposite party is directed to quantify the interest as provided in Reg. 37(2) & (6) of the Terms and Conditions of Supply 2005 for the excess amount for the period from 10.9.2009, the date of order of Electrical Inspector, till the date

of full adjustment of the excess amount so quantified against the future bills of the consumer. The interest shall be quantified within 15 days from the date of receipt of this order and adjustment shall be made in the subsequent bills". Still aggrieved by the decision of CGRF in order OP No. 690/2012 dated 21/1/2012, the appellant has submitted the Appeal petition.

Argument of the Appellant :-

1).The complainant is running a SSI unit and it is a 9001-2000 certified company. The complainant is a deemed HT Industrial Consumer under the Electrical Section, Punalur, with Con.No.14261. The complainant is engaged in the manufacturing of PVC pipes with a connected load of 127 KW.

2). An inspection by the Assistant Engineer, KSEB, Punalur, on 26.11.2005, noticed that two CT's in the energy meter were not working and the recording of the meter was not correct. An additional bill was issued amounting to Rs.13, 22,136/-, assessing for the period from 11/04 to 11/05. The Consumer challenged the said bill before the Hon High Court of Kerala vide WP(c) No.6712/2006. As per judgment dated 7. 3.2006, an amount of Rs.6,61,068/- was deposited. Later a further sum of Rs.2,00,000/- was deposited pursuant to an interim order on 13.09.2006 in W.P(C) No.24314/2006. In the judgment dated 03.06.2009 in W.P.(c) No.24314/2006, the Hon Court has directed the Electrical Inspector, Kollam to consider the grievance of the complainant regarding the additional bills, on the point that the meter was not recording correct consumption of electrical energy. The Electrical Inspector, kollam, decided that the assessment which resulted in the additional bill is improper and the correct quantity is 181458 units. Consequent to the order No.C-1193/06/EIQ dated 10.09.2009, of the Electrical Inspector, Kollam, the AE has revised the additional bill and issued a bill for Rs.3, 51,873/-. The complainant has already remitted an amount of Rs.8, 61,068/- in two spells based on court directions and the balance amount of Rs.5, 09,195/- was credited for adjustment in his future current charges bills.

3). Though, in the Interim order dated 30.09.2006 in WP © no.24314/2006, it was provided that provision for payment of interest to the petitioner will be considered at the time of disposal of the writ petition, no such provision was made in the judgment dated 03.06.2009. In the circumstances R.P.No.724/2010 in WP© 24314/2006 was filed before the Hon High Court, which resulted in the judgment dated 08.04.2011 whereby the contentions of the complainant to agitate the claim for interest was left open to be urged in appropriate proceedings. Therefore, a claim for interest for Rs.3, 09, 195/- from 31.8.2006 and for Rs.2,00,000/- from 13.09.2006, was filed before Hon Forum.

4). Regulation No.37 (2) of the KSEBoard Terms and Conditions of Supply, 2005, provides that "if in the review it was found that the consumer was overcharged, the excess amount shall be repaid within two months with interest at twice the bank rate." In terms with the said regulation, the following claim for interest was made.

(i)Interest for 3, 09,195 from 31.08.2006	= Rs.2, 63,457.00
@ 18% (double the rate of interest claimed by nationalized banks.)	
(ii)Interest for 2, 00,000 from 30.09.2006	= Rs.1, 69,133.00
@ 18% (double the rate of interest claimed by nationalized banks)	
TOTAL	= Rs.4, 32,590.00

Therefore, it was prayed before the CGRF to direct the Assistant Executive Engineer, Punalur, to pay an amount of Rs.4, 32,590/- with future interest @ 18% for the deposit as per Court order.

5).The Forum, after considering the matter on its merits and hearing both the parties have ordered as follows: "The opposite party is directed to quantify the interest as provide in Reg.37 (2) & (6) of the Terms and Conditions of Supply, 2005, for the excess amount for the period from 10.09.2009, the date of order of the Electrical Inspector, till the date of full adjustment of the excess amount and adjust the amount so quantified within 15 days from the date of receipt of this order and adjustment shall be made in the subsequent bills".

6).It is submitted that the impugned order to the extent it restricts the payment of interest from 10.09.2009 till the date of full adjustment of the excess amount, is illegal. Regulation No.37 (2) of the Terms and Conditions of Supply categorically provide for the payment of interest, towards the excess amount, from the date of actual deposit till the date of full adjustment, at double the bank rate prevailing. Hence the impugned order passed by the Forum is not in accordance with the direction contained in the said Regulation. The Forum ought to have found that as claimed by complainant in the notice dated 10.06.2011, an excess amount of Rs.3, 09,195/- was in the deposit of the Board from 31.08.2006 and Rs.2, 00,000/- was in deposit of the Board from 30.09.2006. It may be recalled that the said amount Rs.3,09,195/-is in deposit of the Board as per the judgment dated 7th March 2006 passed by the Hon High Court. Similarly, the deposit of Rs.2, 00,000/- as per interim order dated 30.09.2006 in WP © no: 24314/2006 passed by the High Court, turned out to be an excess amount. Hence applying Regulation 37(2) of the Terms and Conditions of Supply 2005, the complainant was entitled for the entire claim raised in the representation dated 1.6.2011. The lower Forum erred in law in not granting the said relief. Therefore, it is prayed that this Hon Authority may be pleased to set aside the order dated 21st January 2012 on O.P.No.690/2012 passed by the CGRF Kottarakkara to the limited extent of the said order directing to quantify the interest as provided in Reg.32(2) & (6) of the Terms and Conditions of Supply, for the excess amount for the period from 10.09.2009, the date of order of Electrical Inspector and to modify the same by directing the opposite to quantify the interest, from the date of actual deposit of the amounts, till the date of adjustment of the excess amount, and to adjust the same in future bills.

Arguments of the Respondent: -

The main contentions of the respondent are the following.

1).While disposing the Writ petition, the Hon High Court has ordered that if the consumer was charged in excess, that amount should be adjusted against the petitioner's monthly regular bills. As per court direction, KSEB has taken appropriate action without delay and the excess amount has been adjusted from 5/2010 onwards. It may kindly be noted that, the petitioner has neither before adjustment started nor during it was going on, has lodged any complaint with either KSEB or to any forum. Only after a lapse of two years, the petitioner has raised a claim for interest. Since the Hon High Court order had already settled the matter, the plea of the petitioner and the order of CGRF regarding the interest are not sustainable legally.

2).The CGRF has not cared much attention to the averments of KSEB during the hearing. The matter has been settled in accordance with the view and will of the Hon High Court. But what the CGRF had done is the reopening of a case which had already been settled by Hon Court.

3). The Regulation 37 (2) of Terms and Conditions of Supply necessitates that, if after the review of the bill, it is learned that the consumer is over charged, the excess amount paid by the consumer shall be refunded him with interest. In this case, the consumer did not actually pay the bill wholly or partially. The consumer had only remitted the amount as directed by the Hon Court. Hence, the consumer is entitled only to get refund of the excess amount paid and not to any interest at all. That is why the Hon High Court rejected the revision petition of the consumer seeking interest.

4).The CGRF has pointed out that KSEB had made a delay of 8 months to implement the order of Electrical Inspector, Kollam. The respondent had to consult and confront the order with the higher authorities and with legal body of KSEB. Besides, the petitioner meanwhile had approached the Hon High Court again with a revision petition (724/2010) and the respondent had to wait as the court proceedings were going on. It is due to this reason that a delay of 7 ½ months had occurred.

5).If the CGRF verdict is implemented, it will cause, huge financial commitment to KSEB. Since, this is a matter already settled by the Hon High Court, the consumer is not entitled to get any interest as per Reg.37(2) of Terms and Conditions of Supply.

6).The consumer was issued with an additional bill, and was revised as per the report of Electrical Inspector, Kollam. The excess amount of Rs.5,09,195/- has been adjusted against the consumer's monthly regular bills, subsequently from May 2010. The Hon High Court has rejected the plea of the complainant to grant interest for the excess amount remitted. The licensee has complied with the judgment and as per section 37 of the Terms and Conditions of Supply, the excess amount collected has been adjusted towards future bills. The complainant has approached the High Court and the bill was revised as per the directions and the complainant had not raised any plea for the payment of interest. Vide RP No.724/2010 in WP © No.24314 of 2006, no verdict was given with regard to the payment of interest. Hence it is evident and clear that the issue is well settled by the Hon High Court, rejecting the plea of the complainant. No legal option exists to reopen the matter, which is already settled. Hence it is prayed to reject the complaint, which has already been settled.

Analysis and Findings: -

The Hearing of the Case was done on 27.7.2012 in my chamber at Edappally and Sri S. Biju, the learned Counsel for the appellant and Sri. S.G. Suresh Kumar Asst. Executive Engineer, Electrical Sub Division, Punalur, represented each side. On examining the Appeal Petition, the counter of the Respondent, perusing the documents attached and the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The appellant has deposited an amount of Rs.8, 61, 068 in two spells, towards the additional bill issued to the consumer, based on Hon High Court directions. Consequent upon the proceedings of Electrical Inspector, Kollam, the Assistant Engineer, Electrical Section, Punalur, had revised the bill to Rs.3,51,873/- against a demand of Rs.13, 22, 136/- assessed earlier. The excess amount, of

Rs.5,09, 195/, without interest, was credited in consumers account and was adjusted in his future electricity bills, starting from 5/2010. On the petition filed for the interest for the excess amount with KSEB, the CGRF has directed the respondent to quantify the interest for the excess amount for the period from 10/9/2009, the date of order of Electrical Inspector till the date of adjustment of the excess amount and directed to adjust the amount so quantified against the future bills of the consumer. The appellant, still not satisfied with the order of CGRF has claimed interest for the deposited amount of Rs.3, 09, 195/- from 31/8/2006 and for the 2nd deposit of Rs.200000/- from 30/9/2006 @ 18%, in his appeal petition.

The dispute pertains with regard to the entitlement of interest and the period of interest for the excess sum remitted by the appellant and retained by the KSEB till its adjustment. The contention of the respondent is that the claim of interest is a settled matter by the judgment of the Hon High Court in RP No.724/2010 and there exists no grounds to reopen the matter. Also KSEB contends that the judgment of the Hon High Court has been fully implemented and the excess amount of Rs.5, 09, 195/- was fully adjusted against consumer's regular monthly bills from 5/2010 onwards.

Hence the first point to be examined is whether the issue of interest on 'deposited amount' had already been settled or render a bar of subsequent claim for interest, in view of the Hon Court judgment issued. As per the judgment, though the Court has not granted the 'interest for Deposit amount' sought for, by the petitioner in the Review Petition, but has stated that the petitioner can agitate his claim for interest in appropriate proceedings. Considering this fact, CGRF entertained the complaint claiming interest and I also view that the appellant's claim for interest need to be considered as he has deposited excess amount. Therefore, as far as the question of the maintainability of the case is concerned, there is no merit in the averment of the respondent.

The respondent has raised another argument regarding the applicability of Regulation 37(2) of the Terms and Conditions of Supply. He contended that Reg. 37(2) necessitates that, if after the review of the bill, the consumer is overcharged, the excess amount paid by the consumer shall be refunded to him with interest. But here the party actually did not pay the bill wholly or partially, but had deposited an amount as directed by the High Court.

The consumer has deposited a sum, as per Hon Court direction, but it is the part payment of the electricity charges (additional bill) raised by the respondent. Hence, the amount so deposited, if found excess, needs to be refunded with interest as per Regulation 37(2) & (6), which reads as "*... if in the review it was found the consumer was overcharged, the excess amount shall be repaid within two months with interest at twice the bank rate*". It is undisputed that the additional bill claimed by KSEB was an overcharged bill and that is why the party was forced to deposit excess amount. When over charged amount is refunded, the consumer is surely eligible for interest. Whether the appellant is eligible for interest with effect from the date of remittance of the excess amount and what is the rate of interest eligible are the questions to be answered in this case.

DECISION: -

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

(i) The consumer is eligible for interest, for any excess amount paid by him towards the electricity charges, if it is established as excess sum, upon a complaint raised by the party. Here both parties agree that there was an excess payment of Rs. 5, 09, 195/-. In this case, the Hon High Court has ordered specifically, in WP(C) 24314/2006, as; “...*On the other hand if the payment made is in excess of the liability quantified, the excess amount available will be adjusted towards his future bills*”. Hence the excess amount determined, need be adjusted in the future bills of the consumer. Accordingly the respondent has adjusted the excess sum in the regular bills of the consumer from 5/2010 on-wards. The next point is the interest portion of the deposited amount. The Hon Court has ordered it to be decided by the appropriate Forum. This Forum is of the considered view that, the consumer is eligible for Interest for the excess amount deposited, for the reasons stated.

(II) The next point is the rate of interest. As per Regulation 37(2) of KSEB T & C of supply, 2005, the “.....*excess amount shall be repaid within two months with interest at twice the Bank rate*”. The definition given for bank rate is ‘*means the rate at which the Reserve Bank of India is prepared to buy or rediscount bills of exchange*’. It is not the commercial Bank’s Interest rate for deposits. I learn the Bank rate as 6% only and so the consumer is eligible for 12 % interest for excess amount.

Hence it is decided that the appellant is eligible to get interest for the excess amount paid, from the date of remittance in excess, to the day of adjustment in his electricity bill of 5/2010 and so on till the whole excess amount with interest gets vanished. The respondent may prepare an interest calculation statement accordingly and adjust the interest amount so arrived at, in the next bill or subsequent bills of the consumer. The KSEB has to implement this with in 60 days of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to the extent ordered. The CGRF, Kottarakkara order in OP No.690/2012 dated 21.1.2012, is set aside. No order on costs. Dated the 6th May 2013,

Electricity Ombudsman.

Ref. No. P/ 279/ 2012/1729/ Dated 06.05.2013.

Forwarded to

- 1).The Managing Director,
M/s. Solve Plastic Products Pvt Ltd,
Tholicode P.O,Punalur-691 333
- 2). The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Punalur.

Copy to

- (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam,Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vydyuthibhavanam, Kottarakkara.